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March 2, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TWB 204
Washington, DC 20554

Re: *Ex Parte*, International Settlements Policy Reform, International Settlement Rates, IB Docket Nos. 02-324 & 96-261.

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits this letter in response to the February 26, 2004 *ex parte* submission by Vodafone.

With mobile surcharges now required by foreign carriers in more than ninety countries, and rapidly increasing volumes of U.S. international calls terminating on foreign mobile networks, foreign mobile operators are extracting huge and unjustified subsidies from U.S. consumers. Settlement rate benchmarks are a very effective tool to address such market failures, as the Commission's highly successful benchmarks policy amply demonstrates, and the Commission has full authority to prevent further harm to the U.S. public interest by adopting new benchmarks for mobile traffic. *See Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

It is hardly surprising that the foreign mobile operator Vodafone, which is one of the major beneficiaries of high mobile termination rates, seeks to avoid new benchmarks. Tellingly, Vodafone once again offers no cost support for its high termination charges in foreign countries and makes no attempt to rebut the extensive evidence submitted by AT&T showing that a very conservative average cost ceiling for termination on foreign mobile networks is no higher than 8.23 cents per minute.[1] Vodafone certainly fails to excuse the unreasonably high level of foreign

[1] Letter dated Feb. 4, 2003 to Marlene Dortch, Secretary, FCC, from Douglas W. Schoenberger, AT&T (study showing mobile termination rates of approximately 8 cents for upper-income countries,

mobile termination charges by arguing that they apply to all users. As the Commission emphasized in the *Benchmarks Order*, "significant margins on international termination fees" cause "artificially high prices" for U.S. consumers, "discourage foreign carriers from introducing effective competition and cost-based pricing" and "can be used to finance strategies that create competitive distortions" in the U.S. market.[2] To prevent such harm, the Commission's longstanding international settlements policy requires "lower, more economically efficient, *cost-based* international accounting rates," although foreign carriers are frequently government-owned monopolists and charge their domestic customers monopoly rates for the same network elements and services that U.S. carriers purchase through accounting rate arrangements.[3]

Vodafone once again seeks to deflect attention from its high termination rates by making false and irrelevant claims concerning U.S. carrier consumer surcharges for this traffic. As AT&T made clear in its Reply Comments, AT&T must pay the incremental charges for mobile traffic that are levied by the foreign international carriers with which AT&T has correspondent relationships, which sometimes include additional fees for this traffic beyond the amounts charged by foreign mobile carriers.[4] Because AT&T sets its consumer mobile surcharges to recover the incremental charges for mobile traffic that are levied by its corresponding foreign international carriers, Vodafone's comparison of U.S. carrier surcharges with foreign mobile carrier charges is beside the point.

Vodafone also is mistaken in contending that U.S. carrier cost savings from reductions in foreign mobile termination rates are not passed through to U.S. consumers. AT&T updated its consumer mobile surcharges in January 2004 and reduced surcharges on no fewer than *eighteen* routes, including substantial reductions on surcharges for Austria (from 20 to 15 cents), Haiti (from 19 to 14 cents), Turkey (from 8 to 3 cents), Yemen (from 10 to 4 cents) and Zimbabwe (from 16 to 4 cents). AT&T also eliminated the surcharge for Egypt. Unfortunately, those reductions were far outnumbered by the fifty routes on which AT&T was required either to increase existing surcharges or to introduce new surcharges, thus demonstrating that reduced mobile termination rates in some markets do not signify any reduction in the size and scope of the mobile termination problem.

Vodafone incorrectly contends that benchmarks would be "ineffectual" because U.S. carriers correspond with foreign international carriers that hand-off mobile traffic to foreign mobile carriers. Frequently, this "hand-off" in the foreign country is simply to an affiliate. No fewer than three out of four of AT&T's corresponding foreign international carriers in the ninety countries in which AT&T pays mobile surcharges are affiliated with mobile carriers. As noted above, foreign international carriers themselves sometimes add further non-cost-justified charges to the mobile carrier termination charge. And all of AT&T's corresponding foreign international carriers charge the full fixed termination rate for each mobile minute in addition to the incremental mobile surcharge, and provide no credit for the fixed local termination costs that are avoided when a call is terminated on a mobile network.

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approximately 8.5 cents for upper and lower middle income countries and approximately 8.5 cents for lower income and "teledensity less than one" countries).

[2] *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 2 (1997) ("*Benchmarks Order*")

[3] *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶ 3 (1991) (emphasis added).

[4] AT&T Reply Comments, filed February 19, 2003, at 26.

Vodafone also wrongly claims that foreign regulators are taking sufficient action to reduce mobile termination rates. Ovum recently reported that mobile rates are on average 15 times higher than fixed termination rates and that "the 15:1 ratio in call termination prices has remained virtually unchanged over the past three years."[5] AT&T has shown that *only two* foreign regulators (in Korea and the U.K.) have required mobile termination rates to be reduced even close to reasonable levels and that only Korea has so far implemented the required reductions.[6] Indeed, the very large majority of regulators in the more than ninety countries where AT&T pays mobile surcharges have taken no action at all. The European Commission has merely issued a *recommendation* to the European Union ("EU") Member States that remedies are presumptively necessary to address mobile operators' market power over call termination on CPP mobile networks, and *no* EU Member State has so far reduced rates to reasonable levels. Many still allow rates between 13 cents and 22 cents or higher.[7]

Contrary to Vodafone's claim that "unilateral" FCC action is "unwarranted," the Commission is the *only* regulator that can prevent harm to the U.S. public interest by addressing the problem of unreasonably high mobile termination rates -- now required in more than ninety countries -- in a comprehensive and meaningful way. As the Commission found in 1997, settlement rate benchmarks are consistent with international law, including WTO requirements and ITU regulations.[8]

For these reasons, Vodafone fails to rebut AT&T's showing that the Commission should establish new settlement rate benchmarks to prevent further harm to U.S. consumers from unreasonably high foreign mobile termination rates.

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AT&T would be pleased to answer any questions concerning these matters.

Respectfully submitted,

/s/ James J. R. Talbot

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[5] David Rogerson, *Mobile Termination Rates*, Ovum, Jan. 2004, at 8-9.
[6] Letter dated February 18, 2004 to Marlene H. Dortch, Secretary, FCC, from James Talbot, AT&T.
[7] *Id.*
[8] *Benchmarks Order*, ¶¶ 109, 311, 313.

cc: Sheryl Wilkerson, Office of Chairman Powell
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